IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.4538/2007

Chairman, Bal Niketan Sainik School.

vs.

Smt. Kamla Bai and another.

Date : 17.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.M Shishodia, for the petitioner.

- - - - -

BY THE COURT :

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 27.6.2005 by which the Labour Court, Bhilwara allowed the claim of respondent Smt. Kamla and held that the removal of the respondent by the petitioner from 9.10.1994 is in violation to the provisions of Section 25F of the Industrial Disputes Act, 1947 and the respondent is entitled to reinstatement and further entitled to 30% of the back wages with all

consequential benefits.

Learned counsel for the petitioner vehemently submitted that the respondent herself admitted that before 1994, some times, she was called for work and she was not a regular employee. It is further submitted that the respondent never worked on regular basis nor completed 240 days prior to her stoppage of work. According to learned counsel for the petitioner, the respondent had no right to continue after the end of the contract. In view of the above, learned Labour Court committed serious error in answering the reference in favour of the respondent.

I considered the submission of learned counsel for the petitioner and perused the reasons given by the learned Labour Court in the impugned award as well as the facts of the case.

The contention of the claimant/respondent was that she was given appointment from 11.7.1990 and she worked upto 8.10.1994 in the petitioner school. Her salary was Rs.400/- per month. Her appointment was temporary. Her working period was from 7:00 AM to 1:00 PM and thereafter from 3:00 PM to 5:00 PM. During this period, she was the only safai karamchari in the school. During this period, her salary was also increased. From

9.10.1994, the respondent was asked not to come on work and thereafter, the respondent was removed from service and retrenched with effect from 9.10.1994.

The petitioner submitted reply to the claim petition and stated that the respondent was never appointed on the said post from 11.7.1990 to 8.10.1994. In para no.5, it is stated that she was assigned some fixed work for some fixed period only and with the expiry of the term of her appointment, her services came to an end automatically. It is also stated that after 8.10.1994, the respondent never asked for any work and, therefore, no work was given to her. The respondent submitted her affidavit and also placed on record copy of appointment order dated 10.7.1990 as Ex.1, copy of the revision of pay order dated 22.9.1990 as Ex.2 and copy of bank account as Ex.3 wherein the respondent's salary was deposited by the petitioner. Against this, the petitioner produced witness Dr. Tarun Vyas who admitted that the respondent was given appointment and she worked from 11.7.1990 and from 30.4.1991, her services came to an end with the expiry of the term of appointment. However, no documentary evidence was produced by the petitioner before the Labour Court.

In cross examination, the witness of the petitioner clearly admitted that the respondent worked upto 8.10.1994 but that was casual work and she was

asked to work on some occasions only. He also stated that her actual work he can show by the record but the record was not produced. In cross examination, the witness stated that the principal of the petitioner institution told the witness that in the year 1994, whenever there was need of any work, the respondent was called. The principal of the petitioner institution was not produced.

In sum and substance, the Labour Court relied upon the oral evidence as well as documentary evidence and not only of the petitioner but also drawn inference from the evidence of witness of the petitioner itself that the respondent was appointed on the post of safai karamchari by the petitioner and she was retrenched with effect from 9.10.2004. In view of the appreciation of evidence as made by the learned Labour Court, I do not find any illegality in the impugned order.

In view of the above reasons, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya